Approval of a Cutblock near Fort Nelson without Public Review

Complaint Investigation 020380

www.fpb.gov.bc.ca

FPB/IRC/85

October 2002

103-06413/

Table of Contents

The Investigation **1**

Background 1

Issue 2

Discussion 2

Conclusion **4**

Commentary **4**

The Investigation

A resident of the Fort Nelson area complained to the Forest Practices Board that the public did not have the opportunity to review and comment on the planned logging of a cutblock, and that this was contrary to the *Forest Practices Code of British Columbia Act* and its regulations (the Code). The complaint concerns an amendment to a forest development plan (FDP) for Woodlot Licence 1717, located 70 kilometres northeast of Fort Nelson.

The complainant does not believe that logging approved in the amendment will harm forest resources. However, the complainant believes that the extent of the changes proposed in the amendment to the FDP warranted an opportunity for public review and comment.

Background

The Ministry of Forests (MOF) awarded a woodlot licence to the licensee in 1997. The woodlot licence allows for an average annual harvest of 1,000 cubic metres of timber from 600 hectares of Crown land.

The district manager approved the woodlot licensee's 1998-2002 FDP in April 1999, including five cutblocks totalling 31 hectares. The licensee cut trees on one of the cutblocks in 2001, but did not complete yarding of the timber. The licensee left approximately 500 cubic metres of cut timber on the ground, spread over approximately two hectares.

In February 2001, the licensee informed the MOF district manager that he was no longer able to manage the woodlot and he appointed a trustee. The trustee considered options for recovering the remaining timber on the ground, but found it would be too expensive. In February 2002, the trustee proposed amending the FDP to add a new eight-hectare cutblock adjacent to the downed timber to make removal more economical.

In October 2001, the district manager provided a guidance document to licensees in the district, listing FDP amendments that he considers are minor in nature and do not require advertising to the public. The list does not include the addition of a new cutblock, such as the one proposed by the amendment in this complaint. However, the guidance document provides flexibility to recognize individual circumstances. The district manager determined that the amendment was minor in nature and would not require advertising for public review and comment. He did require the licensee to refer the proposed amendment to First Nations, a local trapper and a major licensee. None commented on the proposal. The district manager did not require the licensee to refer the proposed amendment to the Ministry of Water, Land and Air Protection (MWLAP), since MWLAP had advised MOF that it would no longer be able to review FDPs. The district manager approved the amendment in February 2002.

Issue

The investigation examined whether approval of the amendment, without an opportunity for public review and comment, was reasonable.

Discussion

The district manager's decision to approve the amendment without an opportunity for public review and comment was influenced by many considerations. The district manager considered that the time taken for advertising to the public would have delayed yarding the felled timber in the adjacent cutblock until the following winter, because of seasonal harvesting constraints. The district manager said that downed timber would have had no value if it were left on the ground for another year, and planting would have been delayed. He determined that the trustee would be unable to meet cut-control requirements unless the amendment was approved without advertising, as there were no other areas with approved site plans. He wanted the trustee to succeed in managing the woodlot and meeting the licensee's financial obligations.

The Board believes those are compelling reasons for forgoing advertising of the amendment. However, those considerations are not directly relevant under the Code when deciding on the opportunity for public review and comment.

The holder of a woodlot licence must ensure that an FDP describes the location of proposed cutblocks [section 12(1)(a) of the *Woodlot Licence Forest Management Regulation* (WLFMR)]. Generally, the holder of a woodlot licence must make an FDP or amendment available for public review and comment for a period of at least 30 days before submitting the FDP or amendment for approval [section 39 of the *Forest Practices Code of British Columbia Act* (the Act); section 7(4) of the WLFMR]. Together, those requirements mean the public normally has the opportunity to review and comment on proposed cutblocks. However, under section 43(1) of the Act, the district manager can waive the requirement for review or comment for minor changes to an FDP if the amendment:

(a) otherwise meets the requirements of the Code;

(b) will adequately manage and conserve the forest resources for the area to which it applies; and

(c) does not materially change the objectives or results of the plan.

The Board interprets that the addition of a new cutblock can be approved as a "minor change" without an opportunity for public review and comment, providing that the district manager determines the above conditions are met.

The district manager's determination states that the amendment met those conditions. He therefore waived the requirements for public review and comment, as allowed by the Code.

The Board considered whether the district manager's decision to approve the amendment was reasonable in the context of those requirements.

(a) Otherwise meets Code requirements

District staff advised the district manager that the amendment was prepared in accordance with Code requirements. The Board found no evidence to the contrary, and therefore finds that it was reasonable for the district manager to decide the amendment would otherwise meet the requirements of the Code.

(b) Managing and conserving forest resources

The district manager considered that the general public did not comment on the original FDP. The only comments received were from a trapper and First Nations, who did not express any concerns. There are no special resource features for the area of the amendment. Staff advised the district manager that the amendment adequately manages and conserves forest resources. For those reasons, the Board finds that it was reasonable for the district manager to decide that the amendment would adequately manage and conserve forest resources.

(c) Materially change the objectives or results

The Code does not provide any guidance on what "materially change the objectives or results of the plan" means, so an interpretation was required. The Board interprets that an amendment would materially change the **objectives** of the plan if it significantly changed the FDP's stated management objectives or intent. In this case, the district manager found that the amendment does not propose changing the stated objectives of the FDP. The Board confirmed that the amendment proposes to add a cutblock, but does not propose changing the stated objectives or intent of the plan.

The Board interprets that an amendment would materially change the **results** of the plan if it significantly changed the outcome of the FDP relative to its management objectives. The district manager compared the amendment with the objectives of the FDP regarding road access, harvesting and silviculture, as well as conservation strategies for forest resources, including riparian management, biodiversity and forest health. The district manager found the amendment was consistent with achieving the FDP objectives. In particular, he found that salvaging previously-felled timber, which he believed could lead to bark beetle infestations and increase risk of forest fires, was consistent with the FDP's objective to avoid or minimize forest health hazard. The Board agrees that the amendment did not materially change the outcome of the FDP relative to its management objectives.

The Board interprets that an amendment would also materially change the results of an FDP if it significantly changes the amount or location of harvesting. In this case, the new eight-hectare cutblock is arguably significant, relative to the scale of operations for the woodlot. It provides more than two years of its allowable annual cut. The district manager believes the

cutblock did not significantly change the amount or location of harvesting because the cutblock does not increase the area of harvest anticipated in the FDP, and it is adjacent to an approved cutblock where the public did not identify any concerns. The Board believes these reasons provided adequate grounds for the district manager to conclude that the amendment did not significantly change the amount or location of harvesting.

In summary, the Board finds it was reasonable for the district manager to conclude that the amendment did not materially change the objectives or results of the plan.

Conclusion

The Board finds it was reasonable for the district manager to conclude that the amendment met the requirements of the Code, would adequately manage and conserve the forest resources, and did not materially change the objectives or results of the plan. Therefore, the district manager's approval of the amendment without providing an opportunity for public review was reasonable.

Commentary

The FDP is the only opportunity the public has to comment on proposed cutblocks. Approving new cutblocks as minor amendments circumvents the public's opportunity for public review and comment on forestry development, and could reduce the public's confidence in the Code. Therefore, new cutblocks should not normally be approved as minor amendments, although doing so may be appropriate in some individual circumstances.

In this case, the district manager mitigated the effect of the amendment approval on public confidence by referring the amendment to the directly-affected parties. Risk to public confidence was further mitigated by the absence of any specific management issues for the area of the woodlot. Approving the amendment, without providing the public an opportunity for review and comment, likely did not affect the public's confidence in the Code.

The Board believes that continuing public consultation under a results-based Forest Practices Code will be important for maintaining public confidence in forest practices. In the document, *Forest Practices Board Comments on the Government's discussion paper: A Results-Based Forest and Range Practices Regime for British Columbia, June 2002,* the Board states:

> Public consultation is an important means of identifying important resources and community values, and addressing them during the planning stages. In addition to recognizing the democratic rights of citizens to participate in public decision-making processes, effective public consultation in forest management helps to ensure that the diversity of ecological, economic and social views related to forests are considered by decision-makers.